



CH2MHILL

**TERMS AND CONDITIONS OF PURCHASE FOR COMMERCIAL ITEMS
CH2M HILL MOUND, INC.**

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TERMS AND CONDITIONS OF PURCHASE FOR COMMERCIAL ITEMS

PREFACE

These terms and conditions apply to the purchase of commercial items by CH2M HILL Mound, Inc. under DOE contract DE-AC24-03OH20152.

By acknowledging receipt of any order (or by shipping the goods called for by this order or by beginning performance of work under this order) to which these terms and conditions apply, Seller represents and warrants that the goods/items to be supplied under this order are commercial items as defined in the FAR Part 52.202-1. Seller further acknowledges that said representation and warranty is a material representation of fact upon which reliance was placed by Buyer in the placement of this order.

1. DEFINITIONS [1.11]

Unless otherwise indicated, the following definitions shall apply to all provisions of this Contract including all clauses incorporated into this Order by reference:

- (a) The term "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Buyer=s Contracting Representative" (BCR) means certain authorized representatives of Buyer, acting within the limits of their authority as delegated by Buyer. The term Contracting Officer≡ is synonymous with ABuyer=s Contracting Representative≡. The BCR may, from time to time or in response to specific technical issues, designate an individual to act as ABuyer=s Technical Representative≡ (BTR). In that case, the BTR shall provide technical assistance and direction.
- (c) Except as otherwise provided in this Order, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this Order.
- (d) The term "DOE" means the U.S. Department of Energy and "FERC" means the Federal Energy Regulatory Commission.
- (e) ASeller≡ means the legal entity who has agreed, by execution of this Order, to provide the goods or services called for by this Order in accordance with its terms. The term Athis Contractor≡ is synonymous with ASeller≡.
- (f) ABuyer≡ means CH2M HILL Mound, Inc.
- (g) "Order" means the contract document in which, and by acknowledgment of which, Seller agrees to provide, for the consideration stated therein, goods and/or services in accordance with the requirements contained or referenced therein. The terms "purchase order", "contract", or "subcontract" shall be synonymous with the term "Order."
- (h) "Change Notice" means a unilateral direction by Buyer to Seller to proceed with the work as changed and to report the effect on the Order pursuant to the provisions of the changes article.
- (i) "Change Order" means the contract document which, when acknowledged by Seller, modifies the requirements of the Order and establishes the agreement of Seller to provide goods and services in accordance with the requirements of, and for the consideration stated in, the Order as modified by the provisions of the acknowledged Change Order. The term "amendment" is synonymous with the term "change order".
- (j) "Lower-tier subcontractor" means a supplier or subcontractor, including any supporting lower-tier supplier or subcontractor, who has a subcontract or order from Seller or any lower-tier subcontractor.

2. CONTRACT ADMINISTRATION

Buyer's Contracting Representative (BCR) shall be the focal point of contact under this Order for all matters.

3. APPROVALS

The approval by Buyer of designs, work drawings, specifications, reports or any other data submitted by Seller hereunder, regardless of whether or not submittal is specifically required by the Order, shall not affect or relieve Seller from the responsibility to furnish and complete the work required under this Order in full conformance with the requirements of this Order. Further, the approval by Buyer of designs, work drawings, specifications, reports or any other data submitted by Seller hereunder does not release Seller of liability if corrections, modifications, or replacement is required in the future by the Buyer.

4. PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches, advertising, announcements, denials, confirmations or items of a similar nature relating to this Order, or the work required under this Order, which Seller desires to release or publish shall be submitted to Buyer for approval prior to release. As part of the approval request, Seller shall identify the specific media to be used as well as other, pertinent details of the proposed release. All releases by Seller must have the prior approval of Buyer, which shall not be unreasonably withheld. Seller shall include all provisions of this Clause, including this sentence, in all subcontracts or purchase orders under this Order.

5. GENERAL

- (a) The terms and conditions of this Order, including those incorporated by reference, apply notwithstanding any different or additional terms and conditions which may have been or may be submitted or proposed by Seller, and Buyer hereby objects to and shall not be bound by any such additional or different terms and conditions.
- (b) This Order shall be deemed to include related plans, drawings, specifications, and other documents as to the subject matter of this Order. Seller agrees that recourse may not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Order.
- (c) The failure of Buyer to enforce, at any time, any of the provisions of this Order or to require, at any time, performance by Seller of any of the provisions of this Order shall in no way be construed to be a waiver of such provision; shall not, in any way, affect the validity of this Order or any parts thereof; and shall not affect the right of Buyer thereafter to enforce each and every provision of this Order.
- (d) The headings used in this Order are not to be construed as modifying, limiting, or expanding in any the way the scope or intent of the provisions of this Order.
- (e) Seller shall perform all work under this Order as an independent contractor. If any part of the work is subcontracted, Seller is responsible for having the subcontracted work completed in a manner which complies with the requirements of this Order. No act or order of Buyer shall be deemed to be an exercise of supervision or control of/over Seller=s performance, or that of Seller=s subcontractors, hereunder. No provision of this Order and no action taken by Buyer under this Order shall be construed to make or constitute Buyer the employer or joint employer of any of the employees of Seller or of Seller=s subcontractors.

6. ORDER OF PRECEDENCE

Any inconsistency in this contract shall be resolved by giving precedence in the following order:

- (a) The schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

7. GOVERNING LAW

- (a) This Order shall be construed and interpreted according to the federal common law of Government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. In the event that either party hereto must resort to litigation to enforce a right or remedy conferred by law, at equity or the provisions of this Order, the parties agree that any actions shall be brought in a Federal District Court in the State of Ohio if the jurisdictional requirements for that Court can be met. In any event, the parties agree that any litigation that cannot be maintained in Federal District Court shall be brought in the appropriate State Court of the State of Ohio.
- (b) In significant part, the terms of this Order are based upon the terms of the prime contract. To the extent not otherwise provided for herein, it is the general intent of the parties that the words, phrases and terms herein be given the same interpretation established by any official determination relating to the prime contract as to such words, phrases and terms.
- (c) Except as specified below in this paragraph, there shall be no discovery in connection with any dispute resolution or litigation process. However, in the event that any party to such dispute resolution or litigation process shall receive information pertaining to the dispute through anyone's use of the Freedom of Information Act with the Department of Energy, then at the option of the Buyer, other discovery shall be permitted and, if thus permitted at all, shall be opened to all parties. To the extent that such discovery cannot be effectuated by consent and agreement, it shall be under the supervision of the individual assisting with the dispute resolution.

8. MODIFICATION AUTHORITY

Notwithstanding any of the provisions of this Order, Buyer's Contracting Representative shall be the only individual authorized to:

- (a) accept nonconforming work;
- (b) waive any requirement of this Order;
- (c) modify any term or condition of this Order, or
- (d) modify or change the price of this Order.

9. INSURANCE - WORK ON A GOVERNMENT INSTALLATION

The Seller, at its sole cost, shall obtain and maintain in force the following kinds and minimum amounts of insurance that are required **when any work under this Order is conducted on property/premises owned by the Government:**

- (a) Worker's Compensation and Employer's Liability Insurance:
 - (1) The amount required by the State of Ohio under applicable Worker's Compensation and occupational disease statutes.
 - (2) Employer's liability insurance in the amount of \$100,000.

- (b) General Liability Insurance. Bodily liability coverage written on the comprehensive form of policy of at least \$1,000,000.00 per occurrence.
- (c) Automobile Liability Insurance. Coverage shall be on the comprehensive form of policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing this Order. Policies covering automobiles operated in the United States shall provide coverage of at least \$500,000 per person and \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.
- (e) The policy or policies evidencing the above insurance shall be endorsed to name Buyer and Buyer's parent as additional insureds, and a certificate or certificates thereof, shall be provided to Buyer before the commencement of any work by Seller's employees, agents, subcontractors, or representatives on the Mound site. Each policy shall provide that the policy(ies) shall not be canceled, or modified to reduce the coverage or risks insured, without at least thirty (30) days notice to both Buyer and Seller.
- (f) Seller agrees to comply with and to require its subcontractors to comply with all applicable laws, rules and regulations with respect to state industrial insurance or workers= compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal, state and/or local income taxes. Seller further agrees to indemnify Buyer and the Government against, and to save and hold harmless Buyer and the Government from, any and all liability and expense with respect to claims against Buyer or the Government which may result from the failure or alleged failure of Seller or of any of its subcontractors to comply therewith.
- (g) The Seller hereby agrees to release the Buyer and the Government, including their respective affiliates, directors, officers, employees, and representatives, and shall cause Seller's Insurers to waive their rights of subrogation such released parties, for losses or claims for bodily injury, property damage or other insured claims arising out of Seller's or any of its subcontractor's performance under this contract.
- (h) The foregoing insurance coverage's shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by the Buyer or the Government.
- (i) Seller shall include this clause, 9, Insurance – Work on a Government Installation, including this paragraph (i), in all subcontracts under this Order.

10. CONFIDENTIALITY OF INFORMATION

- (a) **To the extent that the work under this Order requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, Buyer or other companies,** Seller shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by Buyer=s Contracting Representative in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by Seller, is in the public domain;
 - (2) Information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller;
 - (3) Information which Seller can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government, Buyer or other companies;
 - (4) Information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

- (b) Seller shall obtain the written agreement, in a form satisfactory to Buyer=s Contracting Representative, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within Seller's organization directly concerned with the performance of this Order.
- (c) Seller agrees, if requested by the Buyer, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to Seller under this Order, and to supply a copy of such agreement to Buyer=s Contracting Representative. From time to time upon request of Buyer=s Contracting Representative, Seller shall supply the Buyer with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which Seller received such information.
- (d) Seller agrees that upon request by Buyer and/or DOE it will execute a DOE approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by Buyer and/or DOE, such an agreement shall also be signed by Seller personnel.
- (e) Seller shall include clause 10, Confidentiality of Information, including this paragraph (e), in all subcontracts under this order.

11. LAWS, REGULATIONS, AND DIRECTIVES

- (a) In performing work under this Order, Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by Buyer=s Contracting Representative. Omission of any applicable law or regulation from specific identification in this Order shall not affect the obligation of Seller to comply with such law or regulation pursuant to this paragraph.
- (b) Except as otherwise directed by Buyer, Seller shall procure all necessary permits or licenses, as required by all applicable laws, regulations, and ordinances of the United States and of the state, territory and political subdivision in which the work under this Order is performed. Seller agrees to insert the substance of this Article, including this sentence, in all lower-tier subcontracts.

12. SELLER EMPLOYEES

- (a) In carrying out the work under this Purchase Order, Seller shall be responsible for selecting all professional, technical, skilled and unskilled personnel engaged and to be engaged by Seller in the work hereunder, and for the training of personnel.
- (b) The Buyer's Contracting Representative shall direct the Seller to remove, and the Seller shall remove, any employee of the Seller from assignment of performance of any services under this purchase order for reasons of security or misconduct or for any reason within the discretion of Buyer's Contracting Representative.
- (c) When the reason for the removal request is due solely to security or misconduct on the part of the Seller's employee, replacement shall be at the Seller's expense and not chargeable to the Buyer.
- (d) Persons employed by Seller shall be and remain employees of Seller, and shall not be deemed employees of the Department of Energy, the Government, or Buyer. Nothing herein shall require the establishment of any employer-employee relationship between Seller and consultants or others whose services are utilized by Seller for work hereunder.
- (e) All payroll related taxes including, but not limited to, federal, state, and local taxes are the sole and exclusive responsibility of the Seller.

13. NUCLEAR HAZARDS INDEMNITY

Buyer's contract with the Department of Energy/the Government contains the provision set forth at DEAR 952.250-70 and titled A Nuclear Hazards Indemnity Agreement (June 1996)≡. Buyer will provide a copy of this provision upon the request of Seller directed in writing to Buyer's Contracting Representative.

14. ACKNOWLEDGMENT OF ORDER AND CONTRACT RIGHTS

- (a) This Order is Buyer's offer and shall become an Order only when accepted either by Seller's signed acknowledgment or Seller's commencement of performance. The terms set forth in this Order constitute the entire agreement of the parties and supersede all previous verbal or written representations (except the written representations and certifications of Seller), agreements and conditions.
- (b) No modification of this Order shall be binding unless made in writing pursuant to the Changes article applicable to the Order. Verbal or written communications (including acknowledgments) which vary from or add to any terms of this Order, its Amendments or Change Orders, or applicable plans or specifications will not be binding unless accepted and authorized by Buyer in writing.
- (c) The remedies reserved to Buyer in this Order shall be cumulative and additional to any other remedies provided in law or equity.

15. TAXES

Unless otherwise expressly stated on the face of this Order, the price stated herein includes all applicable federal, state and local taxes in effect on the date of this Order, but does not include any state or local sales, use, or any other tax directly applicable to the completed supplies or services covered by this Order from which Seller or this transaction is exempt.

16. LIENS

Seller agrees to deliver to Buyer the articles covered by this Order free and clear of all liens, claims and encumbrances.

17. FURNISHED INFORMATION

- (a) Plans, drawings, specifications, designs, photographs and any other engineering and/or manufacturing information furnished by Buyer shall remain Buyer or Government property, as the case may be, shall be reproduced only as authorized in writing by Buyer, shall be used only for performance of the work under this Order, and shall be returned to Buyer upon request, which request may be made during such performance or at termination or completion of the Order. Seller shall thereafter make no further use of any information derived therefrom without the prior written consent of Buyer or the Government.
- (b) Buyer makes no warranty or representation with regard to the completeness or the accuracy of Buyer furnished plans, drawings, specifications, designs, photographs or any other engineering and/or manufacturing information. If any conflicts or inconsistencies between or within the provisions of any Buyer furnished plans, drawings, specifications, designs, photographs or any other engineering and/or manufacturing information appear or are discovered by Seller, Seller will promptly bring such to the attention of Buyer and, if it does not do so, Seller shall proceed at its own risk.
- (c) Seller shall include the provisions of paragraph (a) above in all subcontracts under this Order.

18. TITLE

Title to all material and supplies purchased under this Order shall vest in the Government or Buyer whenever title passes from Seller.

19. PRIORITIES, ALLOCATIONS AND ALLOTMENTS

Seller shall comply with the provisions of the Defense Priorities and Allocation System regulation, 15 CFR Part 700, in obtaining controlled materials and other products and materials needed to fill this Order.

20. ASSIGNMENT

- (a) Neither this Order nor any interest therein nor claim thereunder shall be assigned or transferred by Seller, except as expressly authorized in writing by Buyer.
- (b) This order or any and all rights thereunder may be assigned by Buyer to the Government or any designee of the Government, provided that written notice thereof is given Seller.

21. SET-OFF

Buyer shall be entitled at all times to set-off any amount payable by Buyer in connection with any order against any amount owed by Seller to Buyer arising from transactions relating to any of Buyer's orders with Seller.

22. DELIVERY

- (a) All delivery requirements set forth in this Order are firm. Seller agrees that delays during performance of the Order which would cause delivery to extend beyond the specified delivery (required) date(s), and which are the responsibility of Seller, must be made up by Seller at its expense through the use of whatever means are necessary, including, but not limited to, overtime and additional workshifts. Seller shall notify Buyer in writing within five (5) days of all occurrences or happenings which will result in, or have the possibility of resulting in, a delay or extension beyond the specified delivery (required) schedule.
- (b) Unless otherwise provided in this Order, delivery shall not be made more than forty-five (45) days prior to the required date(s) specified herein. Buyer may return early deliveries at Seller's risk and expense. Seller shall comply with the delivery schedule provided in this Order but shall not, except as otherwise specified in this Order, make material or production commitments without specific written authorization by Buyer nor in advance of such time as Seller reasonably believes necessary to meet delivery schedules.
- (c) Unless otherwise specified in this Order, all items shall be packaged for ease of handling and in such a manner as to assure their protection during shipment and storage. Prices set forth in this Order include all charges for packaging and transportation to the F.O.B. point.
 - (1) If the terms of this Order specify F.O.B. place of shipment, Seller must at that place:
 - (i) ship the goods;
 - (ii) bear the expense and risk of putting them into the possession of the carrier; and,
 - (iii) at its risk and expense, load the goods on board.
 - (2) If the terms of this Order specify F.O.B. place of destination, Seller must, at its own expense and risk, transport the goods to that place and then tender delivery of them to Buyer.

23. PAYMENTS AND DISCOUNTS

- (a) Except as otherwise provided in this Order, e.g., progress payments, no payment by Buyer shall be due until thirty (30) days after: (1) receipt of an acceptable invoice and appropriate evidence that Seller has met all the requirements of this Order; or (2) receipt of the supplies at destination, whichever last occurs. Buyer may, at its sole discretion, make payments for partial delivery of supplies if so requested by Seller. No payment made by Buyer shall be deemed to indicate final acceptance and any payment made prior to final acceptance shall be returned by Seller at the request of Buyer if the supplies to which the payment relates are rejected.

- (b) If this Order provides a discount for prompt payment, and unless otherwise provided, the discount period shall be calculated from the date an acceptable invoice and supporting evidence (that all Order requirements have been met) are received or the date of receipt at destination of the supplies, whichever last occurs.
- (c) Seller and each assignee under an assignment in effect at the time of final payment agree, as a condition precedent to final payment, that Buyer, Buyer's Customer and the Government, their respective officers, agents and employees, are released from all liabilities, obligations and claims arising under or by virtue of this Order. Seller further agrees that the final invoice shall constitute not less than ten percent (10%) of the total Order price.

24. INSPECTION OF SUPPLIES

- (a) All work (which term throughout this clause includes, without limitation, raw materials, procedures and processes, components, intermediate assemblies, and end products or services) shall be subject to inspection and/or test by Buyer, Buyer's customer or the Government, or their authorized representative(s), to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. All inspections and/or tests by Buyer, Buyer's Customer, or the Government shall be performed in such a manner as to not unduly delay the work.
- (b) Inspection and test requirements specifically required by this Order are for the convenience of Buyer, Buyer's Customer or the Government. Inspection and/or test of any work by Buyer, Buyer's Customer or the Government or approval of designs, drawings, samples, test results, procedures, processes or schedules by Buyer, Buyer's Customer or the Government does not relieve Seller from any responsibility to meet all requirements of this Order.
- (c) Except as otherwise provided in this Order, acceptance or rejection of the work shall be made as promptly as practicable after delivery, but failure to inspect and accept or reject work shall neither relieve Seller from responsibility for such items as are not in accordance with Order requirements nor impose liability upon Buyer therefor. Any inspection and/or test by Buyer, Buyer's Customer, or the Government of any work, or lots thereof, does not relieve Seller from any responsibility regarding defects or other failures to meet the requirements of this Order which may be discovered prior to acceptance. Except as otherwise provided in this Order, acceptance shall be conclusive except as regards latent defects, fraud or such gross mistakes as amount to fraud.
- (d) Seller is responsible for and shall, upon Buyer's request, furnish evidence of compliance with all requirements of this Order. Seller shall provide and maintain, and require all of its lower-tier subcontractors to provide and maintain, an inspection and quality control system acceptable to Buyer. Records of all inspections and/or tests by Seller, and its lower-tier subcontractors, shall be kept complete and available to Buyer during the performance of this Order and for a longer period as may be specified elsewhere in this Order.
- (e) If any inspection and/or test is made by Buyer, Buyer's customer or the Government on the premises of Seller or a lower-tier subcontractor, Seller, without additional charge to Buyer, shall provide a safe place to work and reasonable facilities and assistance for the convenience of Buyer, Buyer's Customer or the Government, or their representative(s), in the performance of their duties. Buyer reserves the right to charge to Seller any additional costs incurred by Buyer, Buyer's Customer or the Government when work is not ready at the time such inspection and/or test is requested by Seller or when reinspection and/or retest is necessitated by a prior rejection. If inspection and/or test is made by Buyer, Buyer's Customer or the Government at a location other than the premises of Seller, or of a lower-tier subcontractor, and unless otherwise provided in this Order, it shall be at the expense of Buyer, provided that, in case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection and/or test.

- (f) In case any work is defective in material or workmanship or otherwise not in conformity with the requirements of this Order, Buyer shall have the right either to reject it (with or without instructions as to its disposition) or to require correction. Work which has been rejected or required to be corrected shall be removed, or, if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails to remove such work which is required to be removed, or promptly to replace or correct such work as specified by Buyer, Buyer may either (i) by contract or otherwise replace or correct such work and charge to Seller the cost occasioned Buyer thereby, or (ii) terminate this order for default. Unless Seller corrects or replaces such work within the delivery schedule, Buyer may require the delivery of such work at a reduction in price.

25. WARRANTY OF SUPPLIES

- (a) In addition to its obligations under other provisions of this Order, including those concerning inspection and acceptance, Seller warrants material and workmanship and that the work furnished under this Order will be performed in accordance with Order requirements. If Seller is responsible for design, Seller further warrants that the work will meet all design requirements set forth in this Order. The term of this warranty is for a period of four (4) years after delivery or, in the case of standard commercial articles, one (1) year after delivery.
- (b) Buyer shall give Seller notice of any defect or lack of conformity with Order requirements within a reasonable time after discovery. Seller shall promptly thereafter, without additional cost to Buyer, either (i) correct or replace such defective or non-conforming item, or component thereof, and correct or replace all appropriate drawings, procedures and manuals or (ii) if Buyer does not require correction or replacement of the defective or non-conforming item or component thereof, Seller, within a reasonable time after the notice, shall repay such portion of the Order price of the item as is equitable under the circumstances.
- (c) Buyer has the right to require Seller to correct in place any defective or non-conforming item, or component thereof, delivered under this Order or to return such item or component to Seller for correction in which case Seller shall be responsible for packing and packaging charges and shipping cost, to and from Seller's plant, for the item or component returned for correction. In exercising this right, Buyer will notify Seller which alternative it proposes to take. In this connection, Buyer will be reasonable in making its election in terms of its and the Government's time requirements, the relative economics of each course and the particular circumstances at the time of election, giving due regard to any reasonable requests of Seller. In the event that Seller is required to correct in place, Seller shall not be responsible for removal or reinstallation of the items or structural parts not furnished by Seller under this Order. If Buyer elects to return such item or component to Seller, it shall be without cost to the Buyer, including but not limited to, the costs of removal, transportation and reinstallation of the new item or component. In addition, Seller, at its own expense and without cost to the Buyer, shall repair or replace other items of the work which may have been damaged by such defects or the repairing of the same.
- (d) Unless otherwise agreed, correction or replacement of defective or non-conforming items, or components thereof, shall be performed subject to and in accordance with the provisions of this Order. The corrected or replaced item, items or components thereof shall be subject to the same warranty as provided for in paragraph A. The original warranty for other than the corrected or replaced item, items or components thereof shall continue until the expiration of the period prescribed in paragraph A. plus a period equal to the time elapsed between the discovery of the defect and correction or replacement of the defective item, items or components thereof.
- (e) If Seller fails to proceed with reasonable promptness to make any correction or replacement in accordance with the provisions of this article, Buyer reserves the right to cause such correction or replacement to be made, and Seller agrees to reimburse Buyer for the costs occasioned Buyer thereby.

- (f) Approval of designs, drawings, samples, test results, procedures, processes or schedules by Buyer shall not in any way limit or diminish Seller's warranties hereunder or Seller's duty to perform the work or furnish the goods in strict accordance with the requirements of this Order and the specifications and other documents referenced herein or otherwise applicable hereto.

26. INSPECTION OF SERVICES

- (a) Definitions. "Services", as used in this clause, 26, Inspection of Services, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) Seller shall provide and maintain an inspection system acceptable to Buyer covering the services under this order. Complete records of all inspection work performed by Seller shall be maintained and made available to Buyer during order performance and for as long afterwards as the order requires.
- (c) Buyer has the right to inspect and test all services called for by the order, to the extent practicable at all times and places during the term of the order. Buyer shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services do not conform with order requirements, Buyer may require Seller to perform the services again in conformity with order requirements, at no increase in order amount. When the defects in services cannot be corrected by reperformance, Buyer may (1) require Seller to take necessary action to ensure that future performance conforms to order requirements and (2) reduce the order price to reflect the reduced value of the services performed.
- (e) If Seller fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with order requirements, Buyer may (1) by order or otherwise replace or correct such services and equitably reduce the total order price or (2) terminate the order for default.
- (f) Neither the failure of Buyer to exercise the Right of Inspection nor the failure to discover defective workmanship or material during such inspection will release Seller of its obligation to provide material and workmanship strictly in accordance with the contract.

27. WARRANTY OF SERVICES

- (a) Definitions. "Acceptance", as used in this article, means the act of an authorized representative of Buyer by which Buyer assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the order. "Correction", as used in this clause, 27, Warranty of Services, means the elimination of a defect.
- (b) Notwithstanding inspection and acceptance by Buyer or any provision concerning the conclusiveness thereof, Seller warrants that all services performed under this order will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this order. Buyer shall give written notice of any defect or nonconformance to Seller within one (1) year from the date of acceptance by Buyer. This notice shall state either (1) that Seller shall correct or reperform any defective or nonconforming services, or (2) that Buyer does not require correction or reperformance.
- (c) If Seller is required to correct or reperform, it shall be at no cost to Buyer, and any services corrected or reperformed by Seller shall be subject to this article to the same extent as work initially performed. If Seller fails or refuses to correct or reperform, Buyer may, by order or otherwise, correct or replace with similar services and charge to Seller the cost occasioned to Buyer thereby, or make an equitable adjustment in the order price.
- (d) If Buyer does not require correction or reperformance, Buyer shall make an equitable adjustment in the order price.

28. DISPUTES

- (a) Pending the final resolution of any dispute involving this Order, Seller agrees to proceed with performance of this Order, including the delivery of all goods or services under the Order, in accordance with Buyer's written instructions.
- (b) Seller shall submit to Buyer a written demand for Buyer's final decision regarding the disposition of any dispute between the parties relating to this Order unless Buyer, on its own initiative, has already rendered such a final decision. Any final decision by Buyer shall be expressly identified as such, shall be in writing, and shall be signed by Buyer, except that Buyer's failure to render a final decision within ninety (90) days after receipt of Seller's demand shall be deemed a final decision adverse to Seller's contentions.
- (c) Buyer's final decision shall be conclusive and binding regarding the dispute unless the Parties agree to arbitration of the dispute or Seller commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

29. TERMINATION

- (a) For Convenience. Buyer may at any time terminate this Order in whole or in part for its convenience upon written notice to Seller in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the Order price reflecting the percentage of the work performed prior to termination plus actual direct costs resulting from termination. In no event shall Seller be entitled to lost opportunity costs, unabsorbed overhead or anticipated profits as a result of such termination and in no event shall said termination costs exceed the amount of this Order.
- (b) Default. Buyer may terminate this contract, in whole or in part, upon the Seller's default. The Seller shall be in default if the Seller fails to comply with any material term or condition of the contract; files for protection under the bankruptcy laws or is insolvent; or fails, upon Buyer's request, to provide reasonable assurance to the satisfaction of Buyer, in its sole and absolute judgment, of future performance in accordance with the contract's terms and conditions. The Buyer shall deliver to the Seller written notice of the default, and the Seller shall have seven calendar days to cure the default. If the Seller fails **to cure timely the default, this contract** shall have seven calendar days to cure the default. If the Seller fails **to cure timely the default**, this contract shall terminate without further action by the Buyer. In the event of a default, the Buyer shall not be liable for supplies or services provided **(i)** after the date of the Seller's notice of default or **(ii)** for supplies or services that do not comply with terms and conditions of the contract. No action of the Buyer shall be deemed a waiver of any of its rights whether arising under the terms of this contract or by law, unless the waiver is expressly identified as such in writing and signed by an officer **or authorized representative** of the Buyer. In the event a court of competent jurisdiction determines the Buyer improperly terminated this contract for default, the parties agree the termination shall be deemed a termination for convenience. The Seller shall not be entitled to reimbursement of its attorneys' fees and costs whether the termination is for convenience or for default.

30. PRICE-ANDERSON AMENDMENT ACT

- (a) The Department of Energy has promulgated Procedural Rules (10 CFR 820), Quality Assurance Rules (10 CFR 830.120) and Occupational Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendment Act (PAAA) of 1988, Pub. L. 100-408 dated August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities and, in particular, are designed to achieve compliance with DOE nuclear-safety requirements. Violation of the applicable rules provide a basis for the assessment of civil and criminal penalties under the PAAA.
- (b) Seller is subject to and shall comply with the requirements of the above rules if the performance of work under this Order involves activities or operations for the Mound DOE Exit Project covered by the Nuclear Hazards Indemnity provision of this Order.

- (c) Seller shall indemnify and hold Buyer harmless for any civil penalties levied against Buyer for any violations of applicable DOE nuclear-safety rules, regulations or orders committed by Seller or Seller=s lower-tier subcontractors and suppliers.

31. SUSPECT/COUNTERFEIT PARTS

Suspect and/or counterfeit parts are not permitted at the Miamisburg Closure Project site.

- (a) The Seller shall assure that suspect or counterfeit materials are not provided as an item or part of any item for delivery under this contract. Information in DOE G 440.1-6, Section 4.1, shall be used to minimize the possibility of procuring suspect/counterfeit parts or items. Included with the meaning of suspect/counterfeit materials, are such practices as:
 - 1) Providing re-manufactured, rebuilt, surplus or used materials represented as new.
 - 2) Providing modified, falsified or counterfeit testing laboratory labels or reports.
 - 3) Providing misrepresented materials
 - 4) Providing materials which are fraudulently labeled or marked with another manufacturer's trademark or name.
- (b) Items containing suspect/counterfeit materials will not be accepted by the Buyer. Any Seller supplying counterfeit materials or involved in the above practices shall be subject to the liabilities and penalties for non-conforming supplies such as but not limited to Public Law 101-592 "Fastener Quality Act" November 16, 1990.
- (c) The Buyer reserves the right to require the Seller to certify and/or furnish proof regarding the origin, quality, authenticity, and application for the use of materials supplied by the Seller under this contract. Any materials furnished as part and which have been previously found by the Buyer, and/or the U.S. Department of Energy as suspect shall be deemed, without more proof, to be subject to the above requirement of further proof or certification. The Buyer is also required to report any suspect/counterfeit material violations to the U.S. Department of Energy.
- (d) This provision shall be included in all subcontracts placed by the Seller.
- (e) Attachments 1-5 are incorporated in the terms and conditions of this agreement by reference and are not exhaustive examples.
 - 1) Common characteristics of misrepresented vendor products.
 - 2) DOE's suspect bolt head marking chart
 - 3) Indicators of refurbished breakers
 - 4) Suspect and/or counterfeit flange markings
 - 5) Characteristics of suspect and/or counterfeit valves.
- (f) As may be noted elsewhere in the contract, items provided by Seller for safety applications in nuclear facilities/activities shall be in conformance with DOE G 414.2, Section 4.7.

32. INDEMNITY

Notwithstanding anything to the contrary herein, Seller agrees to defend, indemnify and hold harmless CH2M HILL Mound, Inc., its parents, affiliates, subsidiaries, and their officers, directors, employees, agents and the Government from and Against:

- (a) Any claim, demand, cause of action, liability, loss expense arising from Seller's actual or asserted failure to comply with any provision of this contract;
- (b) Any claim, demand, cause of action, liability, loss or expense arising from Seller's actual or asserted failure to comply with any law, ordinance, regulation, rule or order of any government body (including but not limited to, the actual or asserted failure to pay taxes) including such failures by Seller, its subcontractors or suppliers;
- (c) Any claim, demand, cause of action, liability, loss or expense (including, but not limited to, damages relating to any environmental contamination [such as damages arising under CERCLA, RCRA, CWA, the CAA or any other environmental statute or regulation] or private nuisance), arising directly or indirectly out of goods or services provided under this contract, including the acts or omissions of Sellers subcontractors or suppliers.
- (d) Any claim, demand, cause of action, liability, loss or expense arising from Seller's computer software, hardware or systems incorporated in Seller's work, to adequately process data which contains or references dates later than December 31, 1999.
- (e) If any portion or portions of these clause are deemed unenforceable by a court of competent jurisdiction, then any remaining portions shall remain in full force and effect.

33. SUBCONTRACTING

Unless otherwise provided in these Terms and Conditions of Purchase or in the body of the Order, Seller will not subcontract any work under this Order, nor permit lower-tier subcontracting of any work on any item to be supplied under this Order, without the prior written consent of Buyer. This article is not considered applicable to the procurement of raw material/supplies into the Seller's general inventory stores.

34. BANKRUPTCY

If the Seller files for protection under the bankruptcy laws, it shall give written notice via certified mail to the Company Agreement/Subcontract Administrator responsible for administering the Agreement/Subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the Agreement/Subcontract numbers for which final payment has not been made.

35. STOP WORK - AS IT APPLIES TO SAFETY

In the event the Seller fails to comply with CH2M HILL Mound, Inc.'s or the Seller's safety and/or environmental requirements or applicable safety and environmental laws or regulations, CH2M HILL Mound, Inc. may, without prejudice to any of its other legal or contractual rights, issue an order stopping all or any part of the activities being performed by the Seller or Sellers' Lower-tier Subcontractors. Sellers shall not resume services without CH2M HILL Mound, Inc.'s prior written direction. The Seller shall, at its sole expense, bear the cost for restoration, repair and/or cleanup caused by Seller's actions, and/or non-compliance with the requirements, laws, or regulations. The Seller shall have no right or claim for any extension of time, any additional compensation or any damages by reason of or arising out of any such work stoppage.

36. HOLD HARMLESS

The provisions of this hold harmless clause shall be in addition to any other remedies to which Buyer may be entitled under this Order or at law. The Seller agrees to indemnify and hold Buyer harmless from any expense, liability, fine or penalty, or damage of any kind Buyer incurs as the result of any of the Seller's or its subcontractors':

1. providing to Buyer any false, misleading or improper certification or information;
2. failure to submit timely certified accurate, complete and current cost or pricing data;
3. failure to submit timely certified data of any description that is accurate, complete and current;
4. failure to comply with the FAR's requirements relating to cost accounting standards and practices; or
5. failure to provide information or assurances reasonably required by Buyer to certify a claim to the Government.

37. CLAUSES INCORPORATED BY REFERENCE

- (a) These terms and conditions incorporate the following clauses by reference with the same force and effect as if they were given in full text. Upon request, Buyer's Contracting Representative will make their full text available. In addition to the definitions provided in Article 3, the term "Government" as used in any of the following clauses shall mean "Buyer" unless the context clearly and unambiguously requires that the term mean "the United States Government".

FEDERAL ACQUISITION REGULATION (48 CFR) CLAUSES

NUMBER	DATE	TITLE
52.222-26	FEB 1999	EQUAL OPPORTUNITY
52.222-35	APR 1998	AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.244-6	OCT 1998	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

Seller shall include the above listed clauses in all subcontracts under this Order.

- (b) If identified within the body of the purchase order as being applicable to this Order, the following clauses are incorporated into these terms and conditions by reference with the same force and effect as if they were given in full text. Upon request, Buyer's Contracting Representative will make their full text available. In addition to the definitions provided in Article 3, the term "Government" as used in any of the following clauses shall mean "Buyer" unless the context clearly and unambiguously requires that the term mean "the United States Government".

FEDERAL ACQUISITION REGULATION (48 CFR) CLAUSES

NUMBER	DATE	TITLE
52.215-2	JUN 1999	AUDIT AND RECORDS - NEGOTIATION
52.219-8	OCT 2000	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	OCT 2000	SMALL BUSINESS SUBCONTRACTING PLAN
52.222-6	FEB 1995	DAVIS BACON ACT
52.222-41	MAY 1989	SERVICE CONTRACT ACT
52.224-2	APR 1984	PRIVACY ACT
952.208-70	APR 1984	PRINTING
952.209-72	JUN 1997	ORGANIZATIONAL CONFLICTS OF INTEREST
952.203-70	DEC 2000	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES.

[End of Terms and Conditions of Purchase for Commercial Items]

ATTACHMENT 1

**COMMON CHARACTERISTICS
OF
MISREPRESENTED VENDOR PRODUCTS**

- Non-factory-authorized distributor
- Differences in appearance of items in the same shipment
- Unusual box and packing of component
- Wear marks or scratches on painted surfaces
- Pitting or corrosion of metallic components
- Exterior evidence of attempted repairs
- Missing name plate or new name plate on old component
- Missing part number or irregular stamping on ID tag
- Improper dimensions
- Ground-off casting marks with other markings stamped in the area
- Photocopies of original manufacturer's and UL label
- Missing UL labels on products requiring such

SUSPECT COUNTERFEIT BOLTS

BOLTS WITH THE FOLLOWING HEAD MARKINGS MUST NOT BE INSTALLED IN EQUIPMENT OR FACILITIES AT BWXT of OHIO, INC.

HEADMARK LIST

ALL GRADE 5 AND GRADE 8 FASTENERS OF FOREIGN ORIGIN WHICH DO NOT BEAR ANY MANUFACTURERS' HEADMARKS:



Grade 5
















Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK	MANUFACTURER	MARK	MANUFACTURER
	J Jinn Her (TW)		KS Kosaka Kogyo (JP)




GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK	MANUFACTURER	MARK	MANUFACTURER
	A Asahi Mfg. (JP)		KS Kosaka Kogyo (JP)
	NF Nippon Fasteners (JP)		RT Takai Ltd. (JP)
	H Hinomoto Metal (JP)		FM Fastener Co. of Japan (JP)
	M Minamida Sieybo (JP)		KY Kyoei Mfg. (JP)
	MS Minato Kogyo (JP)		J Jinn Her (TW)
	Hollow Infasco (CA TW JP YU) (Greater than 1/2 inch dia) Triangle		
	E Daiei (JP)		UNY Unytite (JP)

GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:

MARK	MANUFACTURER
	KS Kosaka Kogyo (JP)

GRADE A325 FASTENERS (BENNETT DENVER TARGET ONLY) WITH THE FOLLOWING HEADMARKS:

MARK	MANUFACTURER
Type 1 	A325 KS Kosaka Kogyo (JP)
Type 2 	
Type 3 	

Key: CA - Canada, JP - Japan, TW - Taiwan, YU - Yugoslavia
ANY BOLT ON THIS LIST SHOULD BE TREATED AS DEFECTIVE WITHOUT FURTHER TESTING.

ATTACHMENT 3

INDICATORS OF REFURBISHED BREAKERS

Typically, refurbished circuit breakers sold as new equipment have one or more of the following characteristics:

- The style of breaker is no longer manufactured.
- The breakers may have come in cheap, generic-type packaging instead of in the manufacturers' original boxes.
- Refurbished circuit breakers are often bulk-packaged in plastic bags, brown paper bags, or cardboard boxes with handwritten labels. *New circuit breakers are packed individually in boxes that are labeled with the manufacturer's name, which is usually in two or more colors, and are often date stamped.*
- The original manufacturer's labels and/or the Underwriters Laboratory (UL) or Factory Mutual (FM) labels may have been counterfeited or removed from the breaker. Refurbishing operations have been known to use copying machines to produce poor quality copies of the original manufacturer's and the certifying body's labels.
- Breakers may be labeled with the refurbisher's name rather than the label of a known manufacturer.
- The manufacturer's seal (often multicolored) across the two halves of the case of the breaker is broken or missing.
- Wire lugs (connectors) show evidence of tampering.
- The surface of the circuit breaker may be nicked or scratched yet have a high gloss. Refurbishers often coat breakers with clear plastic to produce a high gloss that gives the casual observer the impression that the breaker is new. The plastic cases of new circuit breakers often have a dull appearance.
- Some rivets may have been removed, and the case may be held together by wood screws, metal screws, or nuts and bolts.
- Contradictory amperage ratings may appear on different parts of the same refurbished breaker. On a new breaker, the amperage rating is stamped into, raised from or machine-painted on the handle of the circuit breaker. In order to supply a breaker with a hard-to-find rating, refurbishers have been known to file down the surface of the handle to remove the original rating and hand-paint the desired amperage rating.

Source: DOE Quality Alert - Issue No. 92-4, August, 1992

ATTACHMENT 4

SUSPECT/COUNTERFEIT FLANGE MARKINGS

The National Board of Boiler and Pressure Vessel Inspectors has identified potentially suspect slip-on, weld neck and blind flanges manufactured in China. Below is a list of markings which appear on the flanges.

- **DSI 4 300 RF B16 A-105N STD .345 China**
- **B-16.5 072 LEO STD TMI 454 China**
- **LEO 4" 150 RFWN STD B-16 A-105 TB-511 China**
- **4" 150 N B-16 A-105 DZ44 GJ China**
- **4" 300 STD A-105 57 China**
- **A-105 LEO 6 150 RFWN STD B-16**
- **4 300 STD B-16 A 105 N W/N 58 China**
- **QD China 6 150 A105 90-610 B16.5**
- **18 2 150 RFSO B16 A105 109MI 292 China**

ATTACHMENT 5

CHARACTERISTICS OF SUSPECT/COUNTERFEIT VALVES

- **Used Valves represented as new.**
- **Non-factory-authorized distributor.**
- **Missing part number or irregular stamping on ID tag' unusual location and attachment of ID tags.**
- **Missing nameplate or new nameplate on old-looking valve.**
- **Freshly sand-blasted appearance, including eye bolts, grease fittings, stem, etc.**
- **Original Equipment Manufacturer marking altered.**
- **Obvious welded repairs.**
- **Wear marks on any painted surface.**
- **Undersized dimensions, e.g., short end-to-end, flange thickness, etc.**
- **Scratched bolts; evidence of bolt-head scoring on backsides of flanges.**
- **Improper nut/bolt material, e.g., bronze nut on stainless stem.**
- **Casting marketings that have been ground off and stamped over.**
- **Foreign material inside.**
- **Improper valve stem packing.**
- **Unusual box or packing of valve, e.g., newspaper from city other than that of manufacturer.**